

## **910 KAR 2:020. Referral process for adult guardianship.**

RELATES TO: KRS 209.020(5), 210.290(3), (4), 387.500-387.990, Chapter 389A

STATUTORY AUTHORITY: KRS 387.600(1), 194A.050(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 387.600(1) authorizes the Cabinet for Health and Family Services to be appointed as limited guardian, guardian, limited conservator, or conservator to conduct an active guardianship or conservatorship program. KRS 194A.050(1) requires the secretary of the cabinet to promulgate administrative regulations necessary under applicable state laws to protect, develop, and maintain the health, personal dignity, integrity, and sufficiency of the individual citizens of the commonwealth. This administrative regulation establishes referral requirements for adult guardianship.

Section 1. Definitions. (1) "Adult" is defined by KRS 209.020(4).

(2) "Conservator" is defined by KRS 387.510(1).

(3) "Court" means a court of competent jurisdiction.

(4) "Disabled" is defined by KRS 387.510(8).

(5) "Division" means the Division of Guardianship.

(6) "Informal network of support" means:

(a) A family member;

(b) A friend;

(c) A neighbor in the life of the individual needing assistance; or

(d) Another interested person or entity.

(7) "Inquiry" means an individual or entity requesting information regarding guardianship services.

(8) "Least restrictive alternatives" means an alternative to guardianship that has been exhausted prior to being eligible for state appointment, including:

(a) Power of attorney;

(b) Living wills;

(c) Advance directives;

(d) Case management;

(e) Representative payee;

(f) Curator;

(g) Trustee;

(h) Health care surrogate;

(i) Ex-parte order;

(j) Emergency protective services;

(k) Adult protective ongoing services;

(l) Informal network of support; or

(m) Supported decision making.

(9) "Limited conservator" is defined by KRS 387.510(2).

(10) "Limited guardian" is defined by KRS 387.510(4).

(11) "Protective services" is defined by KRS 209.020(5).

(12) "Referral source" means an entity that makes an inquiry of the Division of Guardianship Services such as:

(a) A member of the general public;

(b) Adult Protective Services;

(c) Child Protective Services;

(d) A family member;

(e) A medical hospital;

- (f) A jail;
- (g) A psychiatric hospital;
- (h) Another interested person or entity; or
- (i) A long-term care facility.

(13) "Successor guardian" means an individual, agency, or corporation who is appointed to succeed a current guardian removed by a court.

(14) "Supported decision making" means a model for supporting people with disabilities to make significant decisions and exercise their legal capacity.

(15) "Ward" is defined by KRS 387.510(15).

Section 2. Referral Process for Individuals Who Are Not Adjudicated. (1) If a referral source wishes the cabinet to be guardian, conservator, limited guardian, limited conservator, or any combination thereof, the referral source shall first contact the division by phone or in writing.

(2) If the referral source wants to proceed with the referral process the division shall provide, to the referral source, the GF-01 Guardianship Information Form and a cover letter providing instructions on how to submit the completed GF-01.

(3) Upon receipt of the completed GF-01 the division shall review and determine if the referral meets the acceptance criteria as follows:

- (a) The individual being referred for guardianship is an adult;
- (b) Is a legal resident of the Commonwealth, pursuant to KRS 210.290(2)(a);
- (c) Has no capable informal network of support;
- (d) Has exhausted all other least restrictive alternatives;
- (e) Has no other suitable person or entity available or able to be the individual's guardian;
- (f) Does not have a history of violent or sexual criminal behavior; and
- (g) Upon accepting the referral, the division shall:

1. Complete the AOC-745; and

2. Return the original AOC-745 to the referral source for filing with the District Court in the county of residence.

Section 3. Guardianship Referral for Individuals Who Have Been Adjudicated Disabled. (1) Within ten (10) working days of a referral, the division shall send to the referral source:

(a) A blank AOC-795, Petition for Relief Modification or Termination, issued by the Administrative Office of the Courts and available at <https://courts.ky.gov/resources/legalforms/LegalForms/795.pdf>

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(b) The GF-01, Guardianship Information Form; and

(c) A cover letter instructing the referral source to:

1. Complete the forms specified in paragraphs (a) and (b) of this subsection, in their entirety; and

2. Submit the completed forms to the division. Incomplete forms shall be returned without action.

(2) The referral source shall complete the forms listed in subsection (1)(a) and (b) of this section and return the forms to the division.

(3) The division shall review the documentation from the referral source to complete the application process.

(4) If the division accepts the referral, the division shall:

(a) Complete, sign, and notarize an AOC-745, Application for Appointment for Fiduciary, issued by the Administrative Office of the Courts, requesting that the cabinet be appointed to serve as successor guardian, conservator, limited guardian, limited conservator, or any combi-

nation thereof; and

(b) Return the original, signed AOC-745 to the referral source for filing with the District Court in the county of residence.

(5) The division shall return the forms specified in subsections (1)(a), (b), and (4) of this section with a cover letter instructing the referral source to file the forms with the court.

(6) If the division is notified of a hearing by the court, division staff may attend the hearing to meet the respondent and gather information concerning the case.

(7) If the court requests, division staff attending court shall be sworn in as successor guardian, conservator, limited guardian or limited conservator.

Section 4. Nonacceptance for a Guardianship Referral. If the referral does not meet the requirements of Section 2 and Section 3 of this administrative regulation, the division shall notify the referral source in writing within thirty (30) calendar days of receipt of the referral. The referral source may consult with the division for explanation and referral to other services.

Section 5. Incorporation by Reference. (1) "GF-01, Guardianship Information Form", edition 09/2018, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Aging and Independent Living, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m. (35 Ky.R. 1972; 2113; 2285; eff. 5-1-2009; 45 Ky.R. 3322, 46 Ky.R. 516; eff. 9-9-2019; TAm eff. 3-17-2020.)